



**Interlocal Agreement
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 24
AGENDA DATE: Thu 11/18/2004
PAGE: 1 of 1

SUBJECT: Authorize execution of an agreement with the TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) for adding a left turn lane on FM 1826 at the proposed Alta Maria Subdivision in Travis County, TX in an amount not to exceed \$209,098.41.

AMOUNT & SOURCE OF FUNDING: Funding is available from an escrow account collected from the developer to pay for this work.

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Public Works
DEPARTMENT:

DIRECTOR'S
AUTHORIZATION: Sondra Creighton

FOR MORE INFORMATION CONTACT: Tom Forrest, 974-2244; Laura Bohl, 974-7064

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

The Texas Department of Transportation (TxDOT) has established a system whereby a request by a private entity to construct improvements within state-maintained right-of-way must be sponsored by the local government through an Advanced Funding Agreement with TxDOT.

D.R. Horton-Emerald, Ltd. suggests adding a left turn lane on FM 1826 at the proposed Alta Maria Subdivision in Travis County as part of their proposed development. Under this agreement, TxDOT will construct the improvements and the City will pay for the improvements using the funds provided by the developer and held in escrow by the City. The City will not be required to pay for the improvements from any source of funding other than what is provided by the developer.

D.R. Horton-Emerald, Ltd. has deposited funding in the amount of \$298,381.04 in an interest bearing account to cover all TxDOT engineering, contingency, administrative and contingency fees and the City's administrative and contingency fees. The City will hold the funds until requested by TxDOT. Any interest earned by the funds will be paid to D.R. Horton-Emerald, Ltd.

THE STATE OF TEXAS §
THE COUNTY OF TRAVIS §

 ORIGINAL

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
LOCAL GOVERNMENT CONTRIBUTIONS
TO TRANSPORTATION IMPROVEMENT
PROJECTS WITH NO REQUIRED MATCH**

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the City of Austin, acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, Transportation Code, Chapters 201, 221, 227, and 361, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, Government Code, Chapter 791, and Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and,

WHEREAS, Commission Minute Order Number 107420 authorizes the State to undertake and complete a highway improvement generally described as constructing a left turn lane on FM 1826; and,

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as adding a left turn lane on FM 1826 at the proposed Alta Mira Subdivision in Travis County, hereinafter called the "Project"; and,

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the State;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, the State and the Local Government do agree as follows:

AGREEMENT

Article 1. Time Period Covered

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated, as hereinafter provided.

Article 2. Project Funding and Work Responsibilities

The State will authorize the performance of only those Project items of work which the Local Government has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities which is attached to and made a part of this contract.

~~In addition to identifying those items of work paid for by payments to the State, Attachment A, Payment Provision and Work Responsibilities, also specifies those Project items of work that are the~~

Responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.

Article 3. Right of Access

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work. The Local Government will provide for all necessary right-of-way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

If right-of-way is required, the Local Government shall prepare right-of-way maps, property descriptions and other data needed, utilizing all applicable laws governing the acquisition policies for acquiring real property. Tracings of the maps shall be retained by the State for its records.

If the proposed construction requires the adjustment, removal or relocation of any utility facilities, the Local Government and/or its consultant shall establish the necessary utility work and notify the appropriate utility company to design and schedule their adjustments. The Local Government shall be responsible for all costs associated with the adjustments not assumed by the utility company. Removal or relocation of such utilities shall be in accordance with applicable laws, regulations, policies and procedures. In the event additional utilities are required to be adjusted, removed or relocated during the construction of the Project, the Local Government will be responsible for all costs associated with the additional utility work within its jurisdiction.

Article 4. Responsibilities of the Parties

The Local Government acknowledges that while it is not an agent, servant, nor employee of the State, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work on the Project.

Article 5. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local government creates the documents with its own forces or by hiring a consultant or professional provider.

Article 6. Interest

The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

Article 7. Inspection and Conduct of Work

Unless otherwise specifically stated in Attachment A, Payment Provision and Work Responsibilities, to this contract, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* adopted by the State and incorporated herein by reference, or special specifications provided by the State.

Article 8. Increased Costs

In the event it is determined that the funding provided by the Local Government will be insufficient to cover the State's cost for performance of the Local Government's requested work, the Local Government will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the Local Government a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The Local Government shall pay the funds to the State within 30 days of the written notification, unless otherwise agreed to by all parties to this agreement. If the Local Government cannot pay the additional funds, this contract shall be mutually terminated in accord with Article 10 - Termination. If this is a fixed price agreement as specified in Attachment A, Payment Provision and Work Responsibilities, this provision shall only apply in the event changed site conditions are discovered or as mutually agreed upon by the State and the Local Government.

If any existing or future local ordinances, including, but not limited to, outdoor advertising billboards or storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or any other locally proposed changes, including, but not limited to plats or replats, result in increased costs, then, any increased costs associated with the ordinances or changes will be paid by the local government. The cost of providing such right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including expenses related to relocation, removal, or adjustment of eligible utilities.

Article 9. Maintenance

Upon completion of the Project, the State will assume responsibility for the maintenance of the completed Project unless otherwise specified in Attachment A to this agreement.

Article 10. Termination

This agreement may be terminated in the following manner:

- ◆ by mutual written agreement and consent of both parties;
- ◆ by either party upon the failure of the other party to fulfill the obligations set forth herein;
- ◆ by the State if it determines that the performance of the Project is not in the best interest of the State.

If the agreement is terminated in accordance with the above provisions, the Local Government will be responsible for the payment of Project costs incurred by the State on behalf of the Local Government up to the time of termination.

- ◆ Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

11. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:
Sondra Creighton, P.E. Director, Public Works Department City of Austin P.O. Box 1088 Austin, Texas 78767-1088	Robert B. Daigh, P.E. Austin District Engineer Texas Department of Transportation P.O. Drawer 15426 Austin, Texas 78761-5426

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 12. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

Article 13. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

Article 14. Amendments

By mutual written consent of the parties, this contract may be amended prior to its expiration.

Article 15. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

Article 16. Insurance

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

Article 17. Signatory Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT have executed duplicate counterparts to effectuate this agreement.

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
District Engineer

THE LOCAL GOVERNMENT

Name of the Local Government _____

By _____ Date _____

Typed or Printed Name and Title _____

ATTACHMENT A

Payment Provisions and Work Responsibilities

Payment Provisions

The Local Government shall be responsible for 100% of the costs to complete the construction of a left turn lane on FM 1826 into the proposed Alta Mira Subdivision in Travis County. The estimated cost of this work is \$209,098.41, including construction items, engineering and contingencies, administration and indirect costs. The State has estimated the project cost to be as follows:

Estimated Bid Items (from attached sheet)	\$ 162,332.06
Construction Engineering & Contingencies (14.5%)	\$ <u>23,538.15</u>
Subtotal	\$ 185,870.21
Administration Costs (5%)	\$ <u>9,293.51</u>
Subtotal	\$ 195,163.72
Indirect Costs (7.14%)	\$ <u>13,934.69</u>
Estimated Cost of Project	\$ 209,098.41

Engineering and contingencies charges will be based on actual charges.

City's Participation (100%) = \$209,098.41

It is understood that the proposed improvements will be done by the State and the Local Government will transmit to the State, with the return of this Agreement executed by the Local Government, a warrant or check in the amount of \$23,228.20 made payable to the "Texas Department of Transportation" to activate the project. It is further understood that the State will include only those items for the improvements as requested and required by the City. This is a construction estimate only; final participation amounts will be based on actual charges to the project.

Work Responsibilities

1. Environmental Requirements

- A. The Local Government shall prepare the appropriate environmental documentation and secure environmental clearance for the Project. Preparation and coordination of the environmental documentation shall be through Mike Walker, TxDOT Austin District Environmental Coordinator at (512) 832-7168.
- B. To the extent required to complete the Project, the Local Government will be responsible for the mitigation and remediation of any environmental problems associated with the development of the Project. All costs associated with the remediation of the environmental problems will be the responsibility of the Local Government.
- C. The Local Government shall provide to the State written certification from the appropriate regulatory agency(s) that all environmental problems have been remedied, prior to the State advertising for bids.

2. Engineering Services

- A. The Local Government shall prepare or cause to be prepared the engineering plans, specifications, and estimates (P.S. & E.) necessary for the development of the Project. The P.S. & E. shall be prepared in accordance with all applicable laws, policies and regulations, deemed necessary by the State.
- B. The engineering plans shall be developed in accordance with the Texas Department of Transportation Roadway Design Manual, the current edition of the TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges and the Texas Accessibility Standards.
- C. The Local Government shall submit the completed P.S. & E. to the State for review and approval twenty weeks prior to the State's anticipated bid opening date. Should the State determine that revisions are required to the documents, the Local Government shall make the necessary revisions, in accordance with the required dates as outlined in the State's current PS&E Review and Processing Schedule.

3. Construction Responsibilities

The State shall advertise for construction bids, issue bid proposals, receive and tabulate bids and award/reject a contract for construction in accordance with applicable procedures and laws. Actual construction shall be performed by contract, awarded by the competitive bidding process.

Preliminary Estimate
Proposed Improvements
FM 1826 at Alta Mira

Item	Description	Unit	Quantity	Price	Amount
100	Prep Row	STA	9.5	\$ 4500.00	\$ 42,750.00
110	Excav (Rdwy)	CY	580	\$ 5.00	\$ 2,900.00
132	Embank	CY	142	\$ 10.00	\$ 1,420.00
160	Furn & Repl Topsoil	SY	4300	\$ 1.10	\$ 4,730.00
164	Cell Fib Seed	SY	4300	\$ 0.18	\$ 774.00
168	Vegetative Watering	MG	88	\$ 10.00	\$ 880.00
169	Soil Ret Blnt	SY	4300	\$ 1.00	\$ 4,300.00
247	Flex Base	CY	776	\$ 29.00	\$ 22,504.00
310	Asph Matl	Gal	366	\$ 1.40	\$ 512.40
316	Aggr (Ty B Gr 4)	CY	29	\$ 50.00	\$ 1,450.00
316	Asph (HFRS-2)	Gal	1434	\$ 1.25	\$ 1,792.50
340	Hot Mix (TY A)	Ton	85	\$ 32.00	\$ 2,720.00
340	Hot Mix (TY C)	Ton	56	\$ 60.00	\$ 3,360.00
432	Riprap	CY	20	\$ 200.00	\$ 4,000.00
460	Cmp Ar (Gal Stl Des 3)	LF	26	\$ 34.00	\$ 884.00
464	RC Pipe (CL III)	LF	223	\$ 33.00	\$ 7,359.00
467	SET (TY II) 18 in	EA	7	\$ 500.00	\$ 3,500.00
467	SET (TY II) 30 in	EA	2	\$ 650.00	\$ 1,300.00
467	SET (TY II) DES 3	EA	2	\$ 700.00	\$ 1,400.00
502	Barricades	MO	3	\$ 1,500.00	\$ 4,500.00
529	Conc Curb	LF	158	\$ 15.00	\$ 2,370.00
556	Pipe Unddr	LF	30	\$ 17.00	\$ 510.00
644	Sm Rdsd Sgn Assm (TY D-2)	EA	1	\$ 575.00	\$ 575.00
649	Reloc Small Rdsd Assms	EA	2	\$ 200.00	\$ 200.00
658	Obj Mrk Asm	EA	9	\$ 37.50	\$ 337.50
662	Wrk Zn Pav Mrk Remov	LF	3834	\$ 1.10	\$ 4,217.40
666	Refl Pav Mrk I (W) 8 in	LF	3834	\$ 0.60	\$ 2,300.40
666	Refl Pav Mrkr I (W) 24 in	LF	31	\$ 4.50	\$ 139.50
666	Refl Pav Mrkr I (W) Arrow	EA	1	\$ 85.00	\$ 85.00
666	Refl Pav Mrkr I (W) Word	EA	1	\$ 110.00	\$ 110.00
666	Refl Pav Mrkr I (Y) 4 in	LF	3120	\$ 0.25	\$ 780.00
666	Refl Pav Mrkr I (Y) 12 in	LF	206	\$ 2.50	\$ 515.00
666	Refl Pav Mrkr II (W) 4 in	LF	1702	\$ 0.15	\$ 255.30
666	Refl Pav Mrkr II (W) 8 in	LF	150	\$ 0.35	\$ 52.50
666	Refl Pav Mrkr II (W) 24 in	LF	31	\$ 2.50	\$ 77.50
666	Refl Pav Mrkr II (W) Arrow	EA	1	\$ 40.00	\$ 40.00
666	Refl Pav Mrkr II (W) Word	EA	1	\$ 55.00	\$ 55.00
666	Refl Pav Mrkr II (Y) 4 in	LF	3120	\$ 0.20	\$ 624.00
666	Refl Pav Mrkr II (Y) 12 in	LF	206	\$ 1.50	\$ 309.00
672	Rais Pav Mrkr TY I-C	EA	16	\$ 3.00	\$ 48.00
372	Rats Pay Mrkr TY II-A-A	EA	155	\$ 3.00	\$ 465.00

577	Elim Ext Pav Mrk & Mrkr (4 in)	LF	2401	\$	0.75	\$	1,800.75
677	Elim Ext Pav Mrk & Mrkr (Rais)	EA	27	\$	1.30	\$	35.10
3146	Hot Mix Ty C Surf	Ton	505	\$	35.00	\$	17,675.00
5005	Rock Filter Dams	LF	20	\$	13.00	\$	260.00
5005	Rock Filter Dams (Remov & Repl)	LF	10	\$	12.50	\$	125.00
5005	Rock Filter Dams (Remov)	LF	20	\$	6.00	\$	120.00
5249	Temp Sedm Cont Fence	LF	130	\$	1.15	\$	149.50
5249	Temp Sed Cont Fnce (Rmv & Rep)	LF	65	\$	1.15	\$	74.75
5249	Temp Sedm Cont Fence (Remv)	LF	130	\$	0.25	\$	32.50
	Mobilization	LS	1	\$	14,757.46	\$	14,757.46

Subtotal **\$ 162,332.06**